

ORDINANCE NO. 2212

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF GARDNER, KANSAS BY REPEALING AND REPLACING IN THEIR ENTIRETY SECTIONS 16-518.3 OF CHAPTER 16 OF THE CODE OF THE CITY OF GARDNER, KANSAS, AMENDING DISTRICTS "M-1" RESTRICTED INDUSTRIAL DISTRICT.

WHEREAS, the City of Gardner, Kansas initiated the changes to Section 16-518.3 amending districts "M-1" RESTRICTED INDUSTRIAL DISTRICT requirements within the City of Gardner, Kansas; and

WHEREAS, a public hearing on the City's request was held before the Planning Commission of the City of Gardner, Kansas, on the 28th day of August, 2006; and

WHEREAS, said Planning Commission has recommended that said amendments to the zoning ordinance of the City of Gardner, Kansas, be approved.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION ONE: That the zoning ordinance, Section 16-518.3 of Chapter 16 of the Code of the City of Gardner, Kansas, be repealed and replaced in its entirety as follows:

16-518 DISTRICT "M-1" RESTRICTED INDUSTRY DISTRICT.

518.3 CONDITIONAL USES. The following uses of land may be allowed in this district by conditional use permit when submitted to and reviewed and approved by the Planning Commission and the City Council.

- A. Health and Fitness Clubs, Dance Studios, Martial Arts Clubs, and Gymnasiums.
- B. Grain elevators.
- C. Livestock auction sales and/or sales of farm related products including seed and feed.
- D. Child Care Centers
- E. Churches and similar places of worship
- F. Communication Transmission Towers and Antennas over sixty feet (60').

- 1. The purpose and intent of this subsection is to provide for the safe and effective installation and operation of wireless communication antennas, accessory equipment, and support structures. Each application for a Conditional Use Permit for a communication tower shall be accompanied by the following information:
 - a. A site plan.
 - b. A report from a licensed professional structural engineer which describes the tower's capacity including the number and type of antennas it can accommodate.
 - c. A report indicating the justification of the site selected for the communication tower and comparing all potential sites with a one-half mile radius. The report shall indicate why any existing tower within the one-half mile radius cannot be utilized by the applicant.

- d. A photo simulation of the proposed facility from affected properties and the public right-of-way may be required.
 - e. An explanation of the need for the facility to maintain the integrity of the communication system. A map showing the service area of the proposed tower shall be submitted.
 - f. A signed statement from the applicant indicating the intention to share space on the tower with other carriers.
 - g. A copy of the lease between the applicant and the landowner. The lease shall contain the following provisions:
 - 1. The landowner and the applicant shall have the ability to enter into a lease with other carriers for co-location.
 - 2. The landowner shall be responsible for the removal of the communication tower or facility within six months (6) in the event the lessee fails to remove it upon abandonment.
- 2. Height - The maximum height which may be approved for a communication tower is 160 feet. A lightning rod, not to exceed ten feet (10'), shall not be included within the height limitation. All new towers in excess of 100 feet shall be designed to accommodate at least two (2) additional providers. The location of the additional antennas on a legally existing tower shall not require additional approval of the Planning Commission or City Council.
 - 3. Setbacks - All towers and antennas shall meet the required setbacks of the zoning district. In addition to complying with the district regulations, the antenna shall be setback from the property lines a distance equal to the height of the communication tower. A lesser setback may be approved with the Conditional Use Permit, upon demonstration by a licensed structural engineer registered in the state of Kansas that the fall zone of the communication tower is within the radius of the setback. If the communication tower and antenna are setback less than the height of the tower or antenna, it shall be inspected and approved upon construction, by a licensed structural engineer, registered in the state of Kansas. Such towers shall be re-inspected every five (5) years to insure the structural integrity and safety of the antenna.
 - 4. Tower Design - All communication towers shall be of a monopole design unless required by the Planning Commission or Governing Body to be architecturally compatible to surrounding development.
 - 5. Tower Color - All communication tower and antenna structures shall be galvanized metal, except otherwise required by the Planning Commission or City Council. Exceptions may be granted, based on FAA or FCC regulations.
 - 6. Equipment Storage - Mobile or immobile equipment not used in direct support of the tower facility shall not be stored or parked on the site of the communication tower unless repairs to the tower are being made.
 - 7. Accessory Structures - All ground equipment shall be stored with a structure, built of materials compatible with the location and types of surrounding land uses. Use of metal buildings is prohibited.
 - 8. Landscaping - All equipment buildings shall be screened with landscaping or fencing appropriate to the location and types of surrounding land uses. The site shall be landscaped per Section 16-1101 of the zoning ordinance.

9. Access - Access from a public or private roadway. The City Council may wave surfacing materials, curbing and storm water drainage requirements, if recommended by the Engineering Administrator.
10. Security Fencing - Sites shall be enclosed by security fencing to be indicated on the site plan.
11. Permitting - A building permit with structural and electrical drawings, sealed by licensed structural engineer registered in the state of Kansas, is required.

SECTION THREE: All other ordinances of said City in conflict herewith are hereby amended to conform to the provisions of this Ordinance.

SECTION FOUR: This Ordinance shall take effect and be in force from and after passage and publication as provided by law.

PASSED by the Council this 18th day of September 2006.

Carol Lehman, Mayor

ATTEST:

Susan Schultz, Interim City Clerk
(SEAL)